HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 5302(S/S)01:
(Old No. 12447/2000)

Ibne hasan S/o Sri Abdul Gafoor,
R/o Nagar Panchayat, Mahua Kheraganj,
District Udham Singh Nagar. ----Petitioner.

Vs.

1. State of Uttar Pradesh,
2. The Executive Officer,
   Nagar Panchayat Mahua Kheraganj,
   District Udham Singh Nagar,
3. Nagar Panchyat Mahua Kheraganj,
   District Udham Singh Nagar,
   Through its Chairman. ----Respondents.

Sri M.C. Kandpal, learned Senior Counsel for the petitioner,
Learned Asstt. Solicitor General, Union of India/respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri M.C. Kandpal, learned Senior Counsel for the petitioner, learned Standing Counsel for respondent no. 1 and Sri Khalil Ahamad, learned counsel for respondent nos. 2 & 3.

2. By means of this writ petition, the petitioner has prayed to issue a writ, order or direction in the nature of certiorari for quashing of the order dated 2nd February 2000 passed by the respondent no. 2 by which the petitioner's services as Temporary Clerk in Nagar Panchayat Mahua Kheraganj, Udham Singh Nagar has been reverted as a Daily Wager.

3. Submission of the learned counsel for; the petitioner is that the petitioner was initially appointed on 01.09.1988 on Daily Wage basis in Nagar Kshetra Samiti, Mahua Kheraganj, District Nainital (Now district Udham Singh Nagar). He worked

for 122 days in the year 1988. From 01.02.1989, he was assigned to work as Store-keeper/Assistant Clerk in temporary capacity on Daily Wage basis. On 08.01.1992, the State of U.P. issued a Notification for regularisation of Daily Wagers in Local Bodies, who have completed three years and have worked for 240 days in the preceding three years.

4. Since, no action was taken for regularisation of the services of the petitioner in pursuance of the above Notification and the petitioner was removed from services in violation of the directions issued in the above Notification, the petitioner preferred writ petition and the Allahabad High Court on 17.07.1992 passed an order that in the meantime, if the post has not been abolished under orders of appropriate authority, the operation of the impugned order shall remain stayed and the petitioner shall be deemed to be continuing in service and shall be paid his salary. In pursuance of the above order, the petitioner was permitted to continue on the post.

5. The Nagar Kshetra Samiti, Mahua Kheraganj, U.S. Nagar by its resolution dated 30.11.1993 resolved to appoint the petitioner in temporary capacity in the grade of Rs. 950-1500. The petitioner took charge as Clerk on temporary basis on 01.12.1993 and since then he was continuously working as Clerk in Town Area Committee, Mahua Kheraganj.

6. The Town Area Committee requested the Govt. for creation of the post so that the services of the petitioner be regularised. However, the Govt. has not passed any order for creation of the post. It appears that an audit objection was raised in respect of the appointment of the petitioner, to the effect that the appointment of the petitioner has been made illegally as there was no post of Clerk vacant with the Nagar Kshetra Samiti. And in view of the audit objection, the

petitioner was reverted from the post of temporary Clerk to a Daily Wager on 2nd February 2000.

7. Aggrieved with the order dated 2nd February 2000, which is the order impugned in this writ petition, the petitioner preferred this writ petition and the Allahabad High Court on 16.03.2000 passed an order to the effect that till further orders, the operation of the impugned order dated 02.02.2000 shall remain stayed. On the basis of that interim order, the petitioner is continuously working on the post of Assistant Clerk in the Nagar Kshetra Samiti, Mahua Kheraganj which is now falls in the district Udham Singh Nagar. The said interim order was passed by the Allahabad High Court on the ground that the petitioner was reverted without giving him any opportunity of hearing and, thus, the order was in violation of Principals of Natural Justice.

8. Learned counsel for the respondent nos. 2 & 3 has submitted that the Govt. has yet not created any post, though the Town Area Committee has repeatedly requested the Govt. to create post. Though, the Notification dated 08.01.1992 specifically states for regularisation of the services of the Daily Wagers who have completed three years service and for that purpose, the Govt. is considering to created posts for the Local Bodies, yet the Govt. has not taken any decision and has not created any post.

9. Learned counsel for the parties have submitted that no post of Assistant Clerk has yet been created by the State with the respondents and for that purpose, the Board has repeatedly requested to the Govt. and it is expected from the Govt. that the Govt. shall take necessary steps, considering the fact that the petitioner is working with the respondents for the last 18 years.

10. In these circumstances, the respondent no. 3 may sent further request to the Govt. for creation of the post and the respondent no. 1 / the State of Uttaranchal shall take decision on the request of the Board at the earliest.

11. With this observation, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

April 27,2006:
NCM: